

Appeal from a decision of the Eastern States Office, Bureau of Land Management, rejecting noncompetitive acquired lands oil and gas lease offer, ES 30475.

Affirmed.

1. Oil and Gas Leases: Applications: Generally -- Oil and Gas Leases: Rentals

A noncompetitive oil and gas lease offer is properly rejected where the offer is deficient in the first year's advance rental payment by more than 10 percent.

APPEARANCES: John C. Vitullo, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

J. V. & Associates, a partnership, appeals from a January 26, 1983, decision of the Eastern States Office, Bureau of Land Management (BLM), rejecting noncompetitive acquired lands oil and gas lease offer, ES 30475, for failure to tender sufficient rental payment.

Appellant filed its offer with BLM on December 1, 1981, for acquired lands in secs. 23, 24, 27 and 29, T. 6 N., R. 17 W., Ohio River Survey, Gallia County, Ohio, which lands are within the Wayne National Forest. ^{1/} In a decision dated December 13, 1982, BLM rejected the offer in part because the mineral rights to the land requested in sec. 23 are not Federally owned and the description "Sec. 24 - Pt. NW 1/4" is improper for land which

^{1/} Lease offer ES 30475 requested the following lands in Gallia County, Ohio (Wayne National Forest):

T. 6 N., R. 17 W., Ohio River Survey

Section 23 - N 1/2 SE 1/4 except .83 acres in SW corner

Section 24 - Pt. S 1/2 NW 1/4; Pt. N 1/2 SW 1/4; Pt. SW 1/4 NE 1/4;

Pt. NW 1/4 SE 1/4; Pt. SW 1/4 SW 1/4; SE 1/4 SW 1/4;

Pt. NW 1/4

Section 27 - NE 1/4 NE 1/4; NW 1/4 NE 1/4

Section 29 - NE 1/4 NW 1/4; NW 1/4 NE 1/4; SW 1/4 NE 1/4;

Pt. NE 1/4 NE 1/4

has not been surveyed. In its decision dated January 26, 1983, BLM vacated the December 13, 1982, decision and rejected the offer in its entirety, citing 43 CFR 3103.3-1. A status report prepared by the Forest Service, the managing Federal agency, stated that the amount of land applied for exceeds 569.86 acres. ^{2/} Appellant's first year advance rental payment of \$1 per acre for 495 acres was deficient by more than the allowable 10 percent. ^{3/}

Appellant argues that the acreage against which the advance rental payment should be applied is that amount which BLM actually determines should be leased. Appellant avers that since the lands rejected in secs. 23 and 24 are not to be leased, the amount of rental tendered is sufficient. Appellant also states that its advance rental payment was based upon its own determination that the land it applied for amounted to only 495 acres.

[1] It is well established that a noncompetitive oil and gas lease offer is properly rejected where the offeror fails to tender with the offer the full first year's advance rental for all lands described in the offer, as required by 43 CFR 3103.3-1, and where the amount of rental tendered is deficient by more than 10 percent of the proper amount due. Gigantosaurus Resources, Inc., 70 IBLA 52 (1983); James M. Chudnow, 68 IBLA 181 (1982). The rental to be submitted with the offer must correspond to the acreage described in the offer. James M. Chudnow, 67 IBLA 76 (1982). Where a lease offer describes land which is not available for leasing, that acreage cannot be disregarded in calculating the amount of the land included in the offer. Mountain Fuel Supply Co., 13 IBLA 85 (1973). Appellant's remittance was deficient by at least 13 percent. Its original offer cannot be altered or adjusted to comply with 43 CFR 3103.3-1 just because land is unavailable for leasing or subject to rejection. To do so would provide appellant with a benefit by establishing its early priority despite its failure to comply with a regulatory requirement. Accordingly, BLM properly rejected appellant's lease offer.

Appellant indicates that the amount tendered was based upon acreage calculations it had made, but has not shown that the records used by the Forest Service are erroneous. Normally, the acreage of an offer can be ascertained through reference to the public lands survey plats, provided such offer conforms to a completed survey plat. Appellant described the land in its offer by the rectangular survey method, but the offer includes acquired lands partly described by the rectangular survey system and partly described by metes and bounds. Where an applicant is uncertain as to the amount of land requested in its offer, 43 CFR 3103.3-1 provides that the advance rental

^{2/} The Forest Service did not calculate the total amount of acquired land in appellant's offer as the "NW 1/4 of sec. 24" had not been surveyed and the Forest Service had no available conveyance documents for the acquired land supposedly described. By reference to official plats and conveyance documents, the Forest Service determined that the remainder of the land described in lease offer ES 30475 amounted to 569.86 acres.

^{3/} Certain other flaws are also apparent in lease offer ES 30475. See 43 CFR 3101.2-3; Milan S. Papulak, 63 IBLA 16 (1982) (descriptions) and 43 CFR 3102.2-4 (1981) (partnership qualifications).

payment shall be based on "40 acres for each smallest legal subdivision." That type of uncertainty is reflected here.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Anne Poindexter Lewis
Administrative Judge

R. W. Mullen
Administrative Judge